

Federal Acquisition Regulation

32.909

part 1315. These regulations are available via the Internet at <http://www.fms.treas.gov/prompt/>.

(f) *Unavailability of funds.* The temporary unavailability of funds to make a timely payment does not relieve an agency from the obligation to pay interest penalties.

32.908 Contract clauses.

(a) Insert the clause at 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, in solicitations and contracts that contain the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts.

(1) As authorized in 32.904(c)(2), the contracting officer may modify the date in paragraph (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval, if required to afford the Government a practicable opportunity to inspect and test the supplies furnished or evaluate the services performed.

(2) As provided in 32.903, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (ii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

(b) Insert the clause at 52.232-27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see part 36).

(1) As authorized in 32.904(d)(1)(i)(B), the contracting officer may modify the date in paragraph (a)(1)(i)(A) of the clause to specify a period longer than 14 days if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the Contractor's performance under the contract.

(2) As authorized in 32.904(d)(2)(iv), the contracting officer may modify the date in paragraph (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or evaluate the services performed.

(c) Insert the clause at 52.232-25, Prompt Payment, in all other solicita-

tions and contracts, except when the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, applies, or when payment terms and late payment penalties are established by other governmental authority (e.g., tariffs).

(1) As authorized in 32.904(b)(1)(ii)(B)(4), the contracting officer may modify the date in paragraph (a)(5)(i) of the clause to specify a period longer than 7 days for constructive acceptance, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed, except in the case of a contract for the purchase of a commercial item, including a brand-name commercial item for authorized resale (e.g., commissary items).

(2) As provided in 32.903, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (ii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

(3) If the contract is a cost-reimbursement contract for services, use the clause with its *Alternate I*.

32.909 Contractor inquiries.

(a) Direct questions involving—

(1) Delinquent payments to the designated billing office or designated payment office; and

(2) Disagreements in payment amount or timing to the contracting officer for resolution. The contracting officer must coordinate within appropriate contracting channels and seek the advice of other offices as necessary to resolve disagreements.

(b) Small business concerns may contact the agency's local small business specialist or representative from the Office of Small and Disadvantaged Business Utilization to obtain additional assistance related to payment issues, late payment interest penalties, and information on the Prompt Payment Act.

Subpart 32.10—Performance-Based Payments

SOURCE: 60 FR 49715, Sept. 26, 1995, unless otherwise noted.